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March 11, 2011

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: UniTel, Inc. Notice of *Ex Parte* Meeting
WC Docket No. 10-143
Petition of CRC Communications of Maine, Inc. and Time Warner
Cable Inc. for Preemption Pursuant to Section 253**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206, please be advised that on March 10, 2011, the undersigned, along with Thomas J. Moorman, both counsel for UniTel, Inc. ("UniTel"), attended an ex parte meeting via telephone with Bradley Gillen, Wireline legal advisor to Commissioner Baker. Joseph G. Donahue attended as counsel to Lincolnville Networks, Inc., Tidewater Telecom, Inc. Oxford Telephone Company and Oxford West Telephone Company (the "Lincolnville & Oxford RLECs") (UniTel and the Lincolnville & Oxford RLECs being referred to herein as the "Maine RLECs").

During the meeting, the Maine RLECs addressed their perspective that, if the FCC issues a Declaratory Ruling in this matter that serves to undermine the legal and factual findings of the Maine Public Utilities Commission ("MPUC") in the underlying action, the FCC will effectively usurp state's rights delegated by Congress to the State Commissions regarding prosecution of section 251(f) (rural exemption) petitions. The Maine RLECs also noted that this result would be particularly troublesome at a time when the Commission has also sought to bolster the state/federal partnership on universal service issues, as most recently expressed in the Commission's action released February 9, 2011. *See, e.g., In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint on Universal Service, Lifeline and Link-Up, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, FCC 11-13, released February 9,

2011 at ¶¶84-85. As the record in this proceeding confirms, universal service issues were of critical importance to the MPUC's evaluation undertaken and conclusions reached in its July 2010 decision denying the request to remove the section 251(f)(1) rural exemption of each of the Maine RLECs.

Counsel for the Maine RLECs further indicated that the issue of subject matter jurisdiction of the state commission to arbitrate is an issue controlled by a statute, which is to be interpreted and applied, in the first instance, by the entity before which the jurisdictional issue is raised, *i.e.* the state commission, subject to the review of that jurisdiction decision by the court, if an appeal is appropriately taken from such decision. This is not a matter of a regulatory agency interpreting or filling in the gaps in a statute regarding technical matters within the expertise of a regulatory agency; if that were required, then a proposed rule would be offered and all interested parties would comment on it including, but not limited to, the legal basis for such a rule. In this proceeding, however, the question is one of statutory interpretation, in which the strict rules of statutory construction (uninfluenced by policy preferences) are to be applied by the forum and by the courts upon review of that forum's decision.¹

The Maine RLECs' counsel stated that they were uninformed as to what "controversy" was demonstrated in the record in this matter—which is void of any factual information as to multi-state controversy. Thus, counsel for the Maine RLECs emphasized that a Declaratory Ruling, based on a claimed need to "terminate a controversy," was not appropriate.

Counsel noted that there is no controversy (or for that matter uncertainty) because the law is clear, as articulated in the 2006 *Brazos* decision of the U.S. District Court in Texas, which continues to stand unchallenged and unappealed. In fact, the previous decisions of the Commission in the *ZTel* case and the *Number Portability* case are in accord with *Brazos*. The two court decisions cited by the proponents of preemption (and, now presumably, the proponents of a declaratory ruling) as being contrary to *Brazos* are not on point with *Brazos*.

First, the analysis in the *Harrisonville* decision of the U.S. District Court in Illinois addressed to whom Section 251(b) duties are owed and not the distinct issue of the obligation to arbitrate with regard to such duties, which was the specific issue addressed in the *Brazos* decision. In fact, the *Harrisonville* decision makes no mention of the *Brazos* decision, which had been issued a year earlier. Second, the *Vermont Telephone* decision of the U.S. District Court in Vermont was made in the face of a factual situation in which the Vermont rural telephone company had already engaged in negotiations with the CLEC, which is a foundational factual premise which does not exist in the *Brazos* case (or for that matter the underlying section 251(f)(1) proceeding before the MPUC). Thus, the issue is not joined between these decisions and *Brazos*, and any controversy and uncertainty claimed by the preemption proponents is, therefore, not a decisional controversy or uncertainty, but rather is no more than a reflection of the proponents of a declaratory ruling own disagreement with the decision of the MPUC.

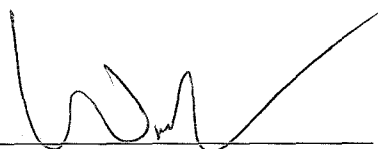
¹ In fact, if there is to be any judicial deference to an agency decision regarding the interpretation of statute regarding jurisdiction to arbitrate, that deference is owed to the state commission, which is the agency charged by Congress with the responsibility to administer the section 251(f)(1) rural exemption provisions of the 1996 revisions to the Communications Act of 1934, as amended (the "Act").

Finally, counsel for the Maine RLECs repeated their concerns that a declaratory ruling would lead to further costly and burdensome litigation. This harmful effect was demonstrated in Time Warner's recent ex parte letter of March 1, 2011, in which it stated its clear intent with respect to what it called a hypothetical future petition under Section 252(f)(2), which Time Warner would apparently wish to see become a full blown proceeding.

Thank you for your consideration.

KELLY & ASSOCIATES, LLC

By:

A handwritten signature in black ink, appearing to be 'W. S. Kelly', written over a horizontal line.

William S. Kelly
Attorney for UniTel, Inc.

cc: B. Gillen
J. Donahue
T. Moorman